

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

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BY PATRICK E. DUFFY, CLERK

BY _____
DEPUTY CLERK

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

GREGORY L. WALLACE,

Petitioner,

vs.

**NORTHERN CHEYENNE TRIBE
INC., CALVIN WILSON,**

Respondents.

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CV-09-115-BLG-RFC-CSO

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On September 17, 2009, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 4*) with respect to Wallace's 28 U.S.C. § 2254 petition for writ of habeas corpus (*Doc. 1*). Because Wallace is incarcerated outside this Court's jurisdiction in Wyoming, Magistrate Judge Ostby recommends the petition be dismissed. Magistrate Judge Ostby further concluded it would be more efficient to dismiss without prejudice and allow Wallace to refile in Wyoming rather than transfer this petition to the District of Wyoming.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). Wallace filed a

document entitled “Petition for Writ of Habeas Corpus” on September 21, 2009. Except for the final sentence in which Wallace admits he has not exhausted his remedies with the Northern Cheyenne tribal courts, the document is incomprehensible and does not contain anything the Court can construe as an objection.

In any event, the lack of an objection does not relieve the Court of its duty to review de novo Magistrate Judge Ostby’s conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989) (the failure to file objections only relieves the trial court of its burden to give *de novo* review to factual findings; conclusions of law must still be reviewed *de novo*) overruled on other grounds by *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996). Here, Magistrate Judge Ostby correctly concluded that the proper respondent to Wallace’s petition is the custodian of the facility where he is held and because that facility is outside the District of Montana, this Court has no jurisdiction over his claims.

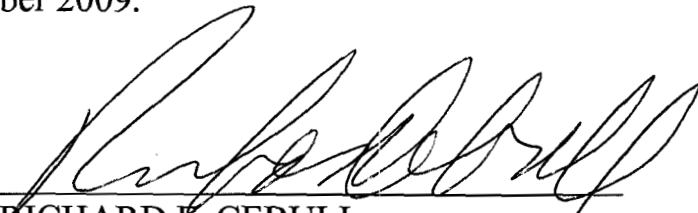
Accordingly, after a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED that Wallace’s Petition (*Doc. 1*) is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is

DENIED.

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED this 14 day of October 2009.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE